

CSD 1160 [05/15/03]

Name, Address, Telephone No. & I.D. No.

WILLIAM G. MALCOLM, #129271**KEVIN HAHN, #231579****MALCOLM ♦ CISNEROS, A Law Corporation****2112 Business Center Drive, 2nd Floor****Irvine, California 92612****(949) 252-9400 (TELEPHONE) (949) 252-1032 (FACSIMILE)****UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

MICHAEL R. PATTERSON,

Debtor.

BANKRUPTCY NO. **09-10872-JM7****JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
and its successors and/or assignees,**

Moving Party

RS NO. **WGM-1****MICHAEL R. PATTERSON, Debtor,
and James L. Kennedy, Trustee,**

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY☒ **REAL PROPERTY** ☐ **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below:

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on **July 28, 2009**.

2. Procedural Status:

a. ☒ Name of Trustee Appointed (if any): **James L. Kennedy**b. ☐ Name of Attorney of Record for Trustee (if any):c. ☐ (Optional) Prior Filing Information:

Debtor has previously filed a Bankruptcy Petition on: _____.

If applicable, the prior case was dismissed on: _____.

d. ☐ (If Chapter 13 case): Chapter 13 plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:

a. Street address of the property including county and state:

**715 Tangiers Court
San Diego, CA 92109**

b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):

Single family residence

c. Legal description of property is attached as Exhibit A.

- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtor's Schedules : \$850,000.00.
- f. *Nature of Debtor's interest in the property:

Owner

2. ☐ The following personal property is the subject of this Motion (*describe property*):

- a. Fair market value of property as set forth in the Debtor's Schedules: \$_____.
- b. Nature of Debtor's interest in the property:

3. *Fair market value of property according to Movant: \$_____.

4. *Nature of Movant's interest in the property: **Secured Creditor holding a First Note and Deed of Trust on the subject property.**

5. *Status of Movant's loan:

- a. Balance owing on the date of Order for Relief: \$941,605.88
- b. Amount of monthly payment: \$3,779.82
- c. Date of last payment: October 8, 2008
- d. If real property,
- i. Date of default: September 1, 2008
- ii. Notice of Default recorded on: March 18, 2009
- iii. Notice of Sale published on: June 24, 2009
- iv. Foreclosure sale currently scheduled for: July 13, 2009
- e. If personal property,
- i. Pre-petition default: \$_____ No. of months: _____
- ii. Post-petition default: \$_____ No. of months: _____

6. (*If Chapter 13 Case, state the following:*)

- a. Date of post-petition default: _____
- Amount of post-petition default: \$_____

7. Encumbrances:

- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months:		Post-Petition Arrearages Total Amount - # of Months	
1 st : JPMORGAN CHASE BANK	\$941,691.88	\$41,503.37	11	\$3,968.81	1
2 nd : WASHINGTON MUTUAL MORTGAGE	\$204,602.00	N/A	N/A	N/A	N/A
3 rd : Mariluz Cornejo	\$100,000.00	N/A	N/A	N/A	N/A
4 th :					
Totals for all Liens:	\$1,246,293.88	\$41,503.37	11	\$3,968.81	1

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in the schedules or otherwise known to Movant:
- ☐ See attached page, if necessary.

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5.)

8. Relief from the automatic stay should be granted because:
- a. ☒ Movant's interest in the property described above is not adequately protected.
 - b. ☒ Debtor has no equity in the ☒ real property ☐ personal property described above and such property is not necessary to an effective reorganization.
 - c. ☐ The property is a "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or ____ days as ordered by this court) have passed since the entry of the order for relief in this case, and
 - i. The Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
 - ii. The Debtor/Trustee has
 - (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
 - (2) ☐ commenced payments, but such payments are less than the amount equal to interest at a current fair market reate on the value of each creditors' interest in the property.
 - d. ☐ *Other cause exists as follows (*specify*): ☐ See attached page.

Movant attaches the following:

1. ☒ Other relevant evidence:

Debtor's Schedules as Exhibit "E"
The affidavit of the FDIC evidencing JPMorgan Chase Bank's acquisition of assets of Washington Mutual Bank, F.A. is attached hereto as Exhibit "F."
2. ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief from the automatic stay to allow JPMORGAN CHASE BANK to enforce its rights and remedies under its Note and Deed of Trust.
- ☒ Other: **JPMORGAN CHASE BANK requests a waiver of the 10-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.**

Dated: **August 24, 2009**

/s/ WILLIAM G. MALCOLM
[Attorney for] Movant,

PN/JPM/40240
Loan No. xxx-xxx-2652

* Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).